

## **Assembly Bill No. 2749**

### **CHAPTER 132**

An act to amend and renumber Sections 13997.2 and 13997.7 of, to amend Sections 12098.3, 63035, 63040, 63056, and 63089.5 of, and to add the heading of Article 6.5 (commencing with Section 12100) to Chapter 1.6 of Part 2 of Division 3 of Title 2 of, the Government Code, and to amend Section 44559.1 of the Health and Safety Code, relating to economic development.

[Approved by Governor July 16, 2014. Filed with  
Secretary of State July 16, 2014.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

AB 2749, Committee on Jobs, Economic Development, and the Economy. Economic development.

(1) Existing law defines specified terms relating to economic development and authorizes the Business, Transportation and Housing Agency and its secretary to expend specified funds.

This bill would renumber these provisions, and would instead authorize the Governor's Office of Business and Economic Development and its director to expend these funds.

(2) The Bergeson-Peace Infrastructure and Economic Development Bank Act establishes the Infrastructure and Economic Development Bank within the Governor's Office of Business and Economic Development, governed by a board of directors composed of 5 members. The act requires the bank to annually submit to the Governor and the Joint Legislative Budget Committee a report of its activities for the preceding fiscal year. The act also requires the bank to establish criteria, priorities, and guidelines for the selection of projects to receive its assistance that includes compliance with the State Environmental Goals and Policy Report, or its successor. Existing law prohibits review of the expenditures of the bank's infrastructure bank fund, except for by the Legislature, as specified.

This bill would modify the bank's annual reporting requirement to, among other requirements, be instead transmitted to the Governor and the Legislature, and require the executive director of the bank to post the report on the bank's Internet Web site. This bill would waive compliance with the State Environmental Goals and Policy Report, or its successor, as a factor for receiving the banks's assistance, if the report has not been updated, as specified. This bill would modify the Legislature's review of the bank relating to the infrastructure bank fund, to among other things, include the amount of credit and liabilities of the fund, based on an audit of the fund at the close of the prior fiscal year.

(3) Existing law, the Small Business Financial Assistance Act of 2013, until January 1, 2018, continues in existence the California Small Business Expansion Fund, a continuously appropriated fund which includes General Fund moneys, and authorizes all or a portion of the funds in the expansion fund to be paid out to a financial institution or financial company that will establish a trust fund and act as a trustee of the funds, as specified. Existing law authorizes the program manager, as defined, to create one or more accounts in the expansion fund and the trust fund for corporations participating in one or more programs authorized by the Small Business Financial Assistance Act of 2013 and the California Disaster Assistance Act, as specified. Existing law, on and after January 1, 2018, eliminates the authorization to utilize funds in the expansion fund and the trust fund for corporations participating in one or more programs pursuant to the California Disaster Assistance Act.

This bill would continue the authorization to utilize funds in the expansion fund and the trust fund for corporations participating in one or more programs pursuant to the California Disaster Assistance Act, as specified.

*The people of the State of California do enact as follows:*

SECTION 1. Section 12098.3 of the Government Code is amended to read:

12098.3. (a) The Director of the Office of Small Business Advocate shall be appointed by, and shall serve at the pleasure of, the Governor.

(b) The Governor shall appoint the employees who are needed to accomplish the purposes of this article.

(c) The duties and functions of the advocate shall include all of the following:

(1) Serve as the principal advocate in the state on behalf of small businesses, including, but not limited to, advisory participation in the consideration of all legislation and administrative regulations that affect small businesses, and advocacy on state policy and programs related to small businesses on disaster preparedness and recovery including providing technical assistance.

(2) Represent the views and interests of small businesses before other state agencies whose policies and activities may affect small business.

(3) Enlist the cooperation and assistance of public and private agencies, businesses, and other organizations in disseminating information about the programs and services provided by state government that are of benefit to small businesses, and information on how small businesses can participate in, or make use of, those programs and services.

(4) Consult with experts and authorities in the fields of small business investment, venture capital investment, and commercial banking and other comparable financial institutions involved in the financing of business, and with individuals with regulatory, legal, economic, or financial expertise,

including members of the academic community, and individuals who generally represent the public interest.

(5) Seek the assistance and cooperation of all state agencies and departments providing services to, or affecting, small business, including the small business liaison designated pursuant to Section 14846, to ensure coordination of state efforts.

(6) Receive and respond to complaints from small businesses concerning the actions of state agencies and the operative effects of state laws and regulations adversely affecting those businesses.

(7) Counsel small businesses on how to resolve questions and problems concerning the relationship of small business to state government.

(8) Maintain, publicize, and distribute an annual list of persons serving as small business ombudsmen throughout state government.

SEC. 2. The heading of Article 6.5 (commencing with Section 12100) is added to Chapter 1.6 of Part 2 of Division 3 of Title 2 of the Government Code, to read:

#### Article 6.5. Local Economic Development

SEC. 3. Section 13997.2 of the Government Code is amended and renumbered to read:

12100. (a) The Legislature finds and declares all of the following:

(1) California's economic development organizations and corporations are an integral component of the state job creation effort because they are a critical link between state economic development activities and the statewide business community, providing an excellent opportunity to leverage state resources.

(2) Economic development corporations and organizations provide broad public benefits to the residents of this state by alleviating unemployment, encouraging private investment, and diversifying local economies.

(3) Economic development corporations engage in a wide range of programs and strategies to attract, retain, and expand businesses, including marketing the community, small business lending, and other financial services, a wide range of technical assistance to small business, preparation of economic data, and business advocacy.

(4) By using public sector resources and powers to reduce the risks and costs that could prohibit investment, the public sector often sets the stage for employment-generating investment by the private sector.

(b) For purposes of this chapter, all of the following definitions apply:

(1) "Local economic development organization" means a public or public-private job creation activity recognized by cities and counties as the lead agency within that city or county for planning and implementation of job creation involving business expansion, business retention, and new business development.

(2) "Regional economic development organization" means an organization comprised of any of the following:

- (A) A single county.
  - (B) More than one county.
  - (C) A subregion within a county established by the cities and county within that subregion.
  - (D) An economic development corporation.
- (3) “Economic development corporation” means a local or regional nonprofit public-private economic development organization recognized in a defined region by the public and private sector as the lead agency for the planning and implementation of job creation involving business retention and new business development.
- (4) “Regional economic development corporation” means a corporation comprised of any of the following:
- (A) A single county.
  - (B) More than one county.
  - (C) A subregion within a single county established by a group of cities and counties.
- (5) “Economic development” means any activity that enhances the factors of productive capacity, such as land, labor, capital, and technology, of a national, state, or local economy. “Economic development” includes policies and programs expressly directed at improving the business climate in business finance, marketing, neighborhood development, small business development, business retention and expansion, technology transfer, and real estate redevelopment. “Economic development” is an investment program designed to leverage private sector capital in such a way as to induce actions that have a positive effect on the level of business activity, employment, income distribution, and fiscal solvency of the community.
- (6) “Local economic development” is a process of deliberate intervention in the normal economic process of a particular locality to stimulate economic growth of the locality by making it more attractive, resulting in more jobs, wealth, better quality of life, and fiscal solvency. Prime examples of economic development include business attraction, business expansion and retention, and business creation.
- (7) “Emerging domestic market” means people, places, or business enterprises with growth potential that face capital constraints due to systemic undervaluations as a result of imperfect market information. These markets include, but are not limited to, ethnic-owned and women-owned firms, urban and rural communities, companies that serve low-income or moderate-income populations, and other small- and medium-sized businesses.
- (8) “Financial intermediary” means an institution, firm, organization, or individual who performs intermediation between two or more parties in a financial context, such as connecting sources of funds with users of funds. A financial intermediary is typically an entity that facilitates the channeling of funds between lenders, investors, foundations, or other entities that have money and are interested in connecting with businesses or communities where their money can be deployed. Financial intermediaries include, but are not limited to, banks, financial development corporations, economic

developers, microbusiness lenders, and community development organizations.

(9) “Community development intermediary” means an institution, firm, organization, or individual that performs intermediation between two or more parties in a community development context, such as connecting people and organizations that have a stake in the future well-being of communities and individuals who may not easily have access to these stakeholders. A community development intermediary is typically an entity that channels financial and nonfinancial resources between government and foundations and other nonprofit organizations that have resources and are interested in connecting with small- and medium-size businesses and low- and moderate-income households and communities. Community development intermediaries include, but are not limited to, community development corporations, microbusiness lenders, and community development financial institutions.

(10) “Triple bottom line” means the economic, environmental, and social benefits arising from a project, investment, or community and economic development activity.

(11) “Small businesses” means a business with less than 100 employees and with a gross revenue of less than five million dollars (\$5,000,000), or a business that is otherwise targeted by or participating in a federal or state program engaged in programs or services for small businesses. Application of this definition may only be used pursuant to a direct reference.

(12) “Community development” means a process designed to create conditions of economic and social prosperity for the whole community, or a targeted subset of the whole community, with the fullest possible reliance on the community’s initiative and active participation.

(13) “Financial institution capital” means resources of a financial institution, including, but not limited to, a bank or credit union, that are legally available to be used to generate wealth for the financial institution.

(14) “California Council on Science and Technology” means the council established by California academic research institutions, including the University of California, the University of Southern California, the California Institute of Technology, Stanford University, and the California State University, in support of Assembly Concurrent Resolution No. 162 (Res. Ch. 148, Stats. 1988).

(15) “Microbusiness lender” means a nonprofit or nonbank lender that serves very small businesses in low- and moderate-income communities that experience barriers in accessing capital. These businesses are often owned by minorities, immigrants, women, and persons with disabilities. Microbusiness lenders generally provide loans under fifty thousand dollars (\$50,000) and offer business technical assistance, both preloan and postloan, to improve an applicant’s ability to qualify and successfully repay a loan.

SEC. 4. Section 13997.7 of the Government Code is amended and renumbered to read:

12098.7. (a) Notwithstanding any other law, effective January 1, 2008, the Economic Adjustment Assistance Grant funded through the United

States Economic Development Administration under Title IX of the Public Works and Economic Development Act of 1965 (Grant No. 07-19-02709 and 07-19-2709.1) shall be administered by the director, and, for the purpose of state administration of this grant, the director shall be deemed to be the successor to the former Secretary of Business, Transportation and Housing and the former Secretary of Technology, Trade and Commerce. The director may assign and contract administration of the grant to a public agency created pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1.

(b) On January 1, 2008, all federal moneys held in the Sudden and Severe Economic Dislocation Grant Account within the Special Deposit Fund are hereby transferred to the Small Business Expansion Fund created pursuant to Section 14030 of the Corporations Code for expenditure by the office pursuant to Article 9 (commencing with Section 14070) of the Corporations Code for purposes of the Sudden and Severe Economic Dislocation Grant program, or other purposes permitted by the cognizant federal agency.

(c) All loan repayments received on or after January 1, 2008, for the Sudden and Severe Economic Dislocation Grant program loans issued pursuant to former Section 15327 (repealed by Section 1.8 of Chapter 229 of the Statutes of 2003 (AB 1757)) and this section, shall be deposited into the Small Business Expansion Fund and shall be available to the office for expenditure pursuant to the provisions of Article 9 (commencing with Section 14070) of the Corporations Code for the Sudden and Severe Economic Dislocation Grant program, or other purposes permitted by the cognizant federal agency.

SEC. 5. Section 63035 of the Government Code is amended to read:

63035. The bank shall, not later than November 1 of each year, submit to the Governor and the Legislature, pursuant to Section 9795, a report for the preceding fiscal year ending on June 30 containing information on the bank's activities relating to the infrastructure bank fund and programs. The report shall include all of the following:

(a) (1) Information on the infrastructure bank fund, including, but not limited to, its present balance, moneys encumbered, moneys allocated, repayments, and other sources of revenues received during the fiscal year.

(2) Information on the impact of the activities funded by the infrastructure bank fund moneys, including, but not limited to, the number of jobs created and retained, the environmental impact that resulted, and economic value provided to the state.

(b) A specification of conduit and revenue bonds sold and interest rates thereon, including, but not limited to, the use of the bond proceeds.

(c) The amount of other public and private funds leveraged by the assistance provided.

(d) A report of revenues and expenditures for the preceding fiscal year, including all of the bank's costs. The information provided pursuant to this subdivision shall include, but need not be limited to, both of the following:

(1) The amount and source of total bank revenues. Revenues shall be shown by main categories of revenues, including the General Fund, special

funds, federal funds, interest earnings, fees collected, and bond proceeds, for each bank program.

(2) The amount and type of total bank expenditures. Expenditures shall be shown by major categories of expenditures, including loans provided, debt service payments, and program support costs, for each bank program.

(e) A projection of the bank's needs and requirements for the coming year.

(f) Recommendations for changes in state and federal law necessary to meet the objectives of this division.

(g) The executive director shall post the report on the bank's Internet Web site.

SEC. 6. Section 63040 of the Government Code is amended to read:

63040. (a) Following consultation with appropriate state and local agencies, the bank shall establish criteria, priorities, and guidelines for the selection of projects to receive assistance from the bank. Projects shall comply with the criteria, priorities, and guidelines adopted by the bank.

(b) The criteria, priorities, and guidelines shall, at a minimum, be based upon the following:

(1) The State Environmental Goals and Policy Report, or its successor, approved pursuant to Article 5 (commencing with Section 65041) of Chapter 1.5 of Division 1 of Title 7. If the State Environmental Goals and Policy Report, or its successor, has not been adopted within two years of a statutorily required update, compliance with this paragraph is not required until the report is updated.

(2) If the sponsor is a state agency, board, commission, or department, the Capital and Infrastructure Project Planning Report, prepared by the Director of Finance pursuant to Article 2 (commencing with Section 13100) of Chapter 2 of Part 3 of Division 3 of Title 2.

(c) When the bank establishes or makes changes to the criteria, priorities, and guidelines, the bank shall notify the Governor, the fiscal and policy committees of the Legislature that exercise legislative oversight of the bank, and appropriate state and local agencies.

(d) The resolution required in Section 63041 shall have been adopted prior to the project's selection by the bank.

SEC. 7. Section 63056 of the Government Code is amended to read:

63056. (a) Notwithstanding Chapter 2 (commencing with Section 12850) of Part 2.5 of Division 3 of Title 2 and Article 2 (commencing with Section 13320) of Chapter 3 of Part 3 of Division 3 of Title 2, expenditures of the infrastructure bank fund shall not be subject to the supervision or approval of any other officer or division of state government, with the exception of the Legislature. However, the bank's budget shall be prepared and reviewed not later than November 1 of each year and the bank shall submit to the Legislature a report of its activities for the prior fiscal year, as specified in Section 63035.

(b) The bank's budget regarding the infrastructure bank fund shall include the amount of credit and liabilities of the fund, based on an audit of the fund

at the close of the prior fiscal year. The bank's operating budget shall be subject to review and appropriation in the annual Budget Act.

SEC. 8. Section 63089.5 of the Government Code, as added by Section 4 of Chapter 537 of the Statutes of 2013, is amended to read:

63089.5. (a) There is hereby continued in existence in the State Treasury the California Small Business Expansion Fund. All or a portion of the funds in the expansion fund may be paid out, with the approval of the Department of Finance, to a financial institution or financial company that will establish a trust fund and act as trustee of the funds.

(b) The expansion fund and the trust fund shall be used for the following purposes:

(1) To pay defaulted loan guarantee or surety bond losses, or other financial product defaults or losses.

(2) To fund direct loans and other debt instruments.

(3) To pay administrative costs of corporations.

(4) To pay state support and administrative costs.

(5) To pay those costs necessary to protect a real property interest in a financial product default.

(c) The expansion fund and trust fund are created solely for the purpose of receiving state, federal, or local government moneys, and other public or private moneys to make loans, guarantees, and other financial products that the California Small Business Finance Center and a small business financial development corporation are authorized to provide.

(d) One or more accounts in the expansion fund and the trust fund may be created by the program manager for corporations participating in one or more programs authorized under this chapter and Section 8684.2. Each account is a legally separate account, and shall not be used to satisfy loan guarantees or other financial product obligations of another corporation except when the expansion fund or trust fund is shared by multiple corporations.

(e) The amount of guarantee liability outstanding at any one time shall not exceed four times the amount of funds on deposit in the expansion fund plus any receivables due from funds loaned from the expansion fund to another fund in state government as directed by the Department of Finance pursuant to a statute enacted by the Legislature, including each of the trust fund accounts within the trust fund.

(f) This section shall become operative on January 1, 2018.

SEC. 9. Section 44559.1 of the Health and Safety Code is amended to read:

44559.1. As used in this article, unless the context requires otherwise, all of the following terms have the following meanings:

(a) "Authority" means the California Pollution Control Financing Authority.

(b) "California Capital Access Fund" means a fund created within the authority to be used for purposes of the program.

(c) "Executive director" means the Executive Director of the California Pollution Control Financing Authority.



(d) (1) “Financial institution” means a federal- or state-chartered bank, savings association, credit union, not-for-profit community development financial institution certified under Part 1805 (commencing with Section 1805.100) of Chapter XVIII of Title 12 of the Code of Federal Regulations, or a consortium of these entities. A consortium of those entities may include a nonfinancial corporation, if the percentage of capitalization by all nonfinancial corporations in the consortium does not exceed 49 percent.

(2) (A) “Financial institution” also includes a lending institution that has executed a participation agreement with the Small Business Administration under the guaranteed loan program pursuant to Part 120 (commencing with Section 120.1) of Chapter I of Title 13 of the Code of Federal Regulations and meets the requirements of Section 120.410 of Chapter I of Title 13 of the Code of Federal Regulations, a small business investment company licensed pursuant to Part 107 (commencing with Section 107.20) of Chapter I of Title 13 of the Code of Federal Regulations, and a small business financial development corporation, as defined in Chapter 1 (commencing with Section 14000) of Part 5 of Division 3 of Title 1 of the Corporations Code, or microbusiness lender, as defined in Section 12100 of the Government Code, that meets standards that shall be established by the authority. For loans where all or part of the fees and matching contributions are paid by an entity participating in the program pursuant to subdivision (e) of Section 44559.2, “financial institution” also includes financial lenders, as defined in Section 22009 of the Financial Code, making commercial loans, as defined in Section 22502 of the Financial Code.

(B) A financial institution described in this paragraph shall be domiciled or have its principal office in the State of California.

(3) “Financial institution” also includes an insured depository institution, insured credit union, or community development financial institution, as these terms are defined in Section 4702 of Title 12 of the United States Code.

(e) “Loss reserve account” means an account in the State Treasury or any financial institution that is established and maintained by the authority for the benefit of a financial institution participating in the Capital Access Loan Program established pursuant to this article for the purposes of the following:

(1) Depositing all required fees paid by the participating financial institution and the qualified business.

(2) Depositing contributions made by the state and, if applicable, the federal government or other sources.

(3) Covering losses on enrolled qualified loans sustained by the participating financial institution by disbursing funds accumulated in the loss reserve account.

(f) “Participating financial institution” means a financial institution that has been approved by the authority to enroll qualified loans in the program and has agreed to all terms and conditions set forth in this article and as may be required by any applicable federal law providing matching funding.

(g) “Passive real estate ownership” means ownership of real estate for the purpose of deriving income from speculation, trade, or rental, but does not include any of the following:

(1) The ownership of that portion of real estate being used or intended to be used for the operation of the business of the owner of the real estate.

(2) The ownership of real estate for the purpose of construction or renovation, until the completion of the construction or renovation phase.

(h) “Program” means the Capital Access Loan Program created pursuant to this article.

(i) “Qualified business” means a small business concern that meets both of the following criteria, regardless of whether the small business concern has operations that affect the environment:

(1) It is a corporation, partnership, cooperative, or other entity, whether that entity is a nonprofit entity or an entity established for profit, that is authorized to conduct business in the state.

(2) It has its primary business location within the boundaries of the state.

(j) (1) “Qualified loan” means a loan or a portion of a loan made by a participating financial institution to a qualified business for any business activity that has its primary economic effect in California. A qualified loan may be made in the form of a line of credit, in which case the participating financial institution shall specify the amount of the line of credit to be covered under the program, which may be equal to the maximum commitment under the line of credit or an amount that is less than that maximum commitment. A qualified loan made under the program may be made with the interest rates, fees, and other terms and conditions agreed upon by the participating financial institution and the borrower.

(2) “Qualified loan” does not include any of the following:

(A) A loan for the construction or purchase of residential housing.

(B) A loan to finance passive real estate ownership.

(C) A loan for the refinancing of an existing loan when and to the extent that the outstanding balance is not increased.

(D) A loan, the proceeds of which will be used in any manner that could cause the interest on any bonds previously issued by the authority to become subject to federal income tax.

(k) “Severely affected community” means any area classified as an enterprise zone pursuant to the Enterprise Zone Act (Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code), any area, as designated by the executive director, contiguous to the boundaries of a military base designated for closure pursuant to Section 2687 of Title 10 of the United States Code, as amended, and any other comparable economically distressed geographic area so designated by the executive director from time to time.

(l) “Small Business Assistance Fund” means a fund created within the authority pursuant to Section 44548.

(m) “Small business concern” has the same meaning as in Section 632 of Title 15 of the United States Code, or as otherwise provided in regulations of the authority.

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